

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DAVID SCHERZ, §
§
Plaintiff, §
§
VS. § CIVIL ACTION NO. H-13-2562
§
HARRIS COUNTY, *et al.*, §
§
Defendants. §

**ORDER GRANTING MOTION TO ABATE AND ADMINISTRATIVELY CLOSING
CASE PENDING RESOLUTION OF STATE CRIMINAL CHARGES**

This suit was filed in the late summer of 2013.¹ The plaintiffs assert civil-rights claims under 42 U.S.C. §§ 1983 and 1988, as well as other constitutional-rights violations arising from their arrest on state-law charges in 2011. When the federal litigation began, the state criminal charges had been dismissed. The charges against two of the plaintiffs were thereafter reinstated and another defendant was criminally charged. The state criminal cases are pending at this time.

The plaintiffs have moved to abate this civil action until the state criminal proceedings against them are resolved. (Docket Entry No. 36). Only one of the defendants opposes the request, but no written statement of opposition has been filed.

It is common to abate civil cases when they are related to pending criminal cases against the litigants. *See, e.g., Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 730, 116 S.Ct. 1712, 135 L.Ed.2d 1 (1996); *Hood v. Smith*, No. 10-cv-4343, 2011 WL378786, *3-*4 (E.D. La. Jan. 11, 2011)

¹On November 26, 2013, the court granted the plaintiffs' motion to transfer a related case, *Scherz Sr., et al. v. Lewis, et al.*, 4:13-cv-2645(NFA), to this court and consolidate it with this case, 13-cv-2562(LHR). (Docket Entry No. 29). Case number 4:13-cv-2645 has been closed.

(staying claims for illegal arrest and illegal seizure of evidence on which pending criminal charges are based); *Quinn v. Guerrero*, No. 4:09-cv-166, 2010 WL 412901, *2 (E.D. Tex. Jan. 28, 2010).

The motion to abate is granted. These consolidated cases are stayed and administratively closed pending the resolution of the related state criminal charges against plaintiffs Yvonne Scherz, David Scherz, Sr., and Jimmy Drummond. This federal civil action may be reinstated to the active docket of this court on motion filed by any party within 14 days after judgment is entered in the related state criminal cases. Pending motions are denied, without prejudice; they may be reasserted, if and as appropriate, when the case is reinstated to the active docket.

SIGNED on February 14, 2014, at Houston, Texas.



Lee H. Rosenthal
United States District Judge